

In Chancery.

MACKLEM

vs.

FULLER AND OTHERS.

Amended

BILL OF COMPLAINT.

NOTICE TO THE DEFENDANTS WITHIN NAMED.

Your answer is to be filed at the Office of the Deputy Registrar at the City of London, in the County of Middlesex.

You are to answer or demur within *Seven days* weeks from the service hereof.

If you fail to answer or demur within the time above limited, you are to be subject to have such Decree or Order made against you as the Court may think just, upon the plaintiff's own shewing; and if this notice is served upon you personally, you will not be entitled to any further notice of the future proceedings in the Cause.

NOTE.—This Bill is filed by Messieurs BECHER, STREET & BECHER, of the City of London, in the County of Middlesex, Solicitors for the above-named Plaintiff.

BECHER, STREET & BECHER.

Printed by Free Press Printing Company.

Amended under order of 1 May 1877.

*Re amended under order of 13 September 1877
after answer*

In Chancery.

BETWEEN SUTHERLAND MACKLEM, *Plaintiff,*

AND

CYNTHIA FULLER, and THOMAS
BROCK - FULLER, her husband,
JULIA ANN MACKLEM, JOSIAH
BURR PLUMB, THOMAS STREET
PLUMB, FREDERICK PLUMB,
DUNCAN - CHARLES PLUMB,
ELIZABETH STREET PLUMB,
MARY GERTRUDE PLUMB, and

Anna Isabel Burr
~~ISABELLA~~ PLUMB, the last *three* *four*
named being infants under the age of 21
years, *and Caroline Becker* (Defendants.
and Henry Corry Rowley Becker
her husband)

CITY OF LONDON :

To the Honorable the Judges of the Court of Chancery,

amended
THE BILL OF COMPLAINT

Of Sutherland Macklem, of Clark Hill, in the Township of Stamford,
in the County of Welland, in the Province of Ontario, Esquire, the
above named Plaintiff,

HUMBLY SHEWETH :

1. At the time of the death of the Honorable Thomas Clark,
hereinafter mentioned, which took place in or about the year of our
Lord 1836, he and Samuel Street, hereinafter mentioned, were seized,
in fee simple, as tenants in common, of those certain parcels or tracts
of land situate, lying and being in the said Township of Stamford,
containing by admeasurement 300 acres, more or less, known as the
"Bridgewater Farm," being composed of Lots Number 191, 193, and
the Broken Fronts adjoining Lots Number 191 and 192, parts of Lots
Number 192, 224 and 223, in the said Township of Stamford, contain-
ing about 300 acres of land, be the same more or less, and ~~butted and~~ *formerly described*
~~bounded~~ as follows, that is to say: Commencing at the south-west
angle of the Military Reserve on Lots Number 192 and 224, bearing
north 68 degrees west, or whatever course the south-west boundary
line of the said Military Reserve may be at the distance of 500 feet
from the south-west angle of the picketing around the King's Store-
house and Wharf, on the west side of the River Welland; thence on

the same course, or in the same direction, 750 feet, more or less, to the north-west angle of land conveyed by Benjamin Hardison to James Macklem, on the eleventh day of August, in the year 1806; thence southerly, to form a right angle with the said course, 8 chains, more or less, to the south-west angle of the same; thence easterly parallel with the said first mentioned course, more or less, to the north-west angle of land conveyed by the said Benjamin Hardison to John Fanning by Indenture, the first day of March, 1810, being at the distance of five chains from the easternmost angle of the same, on the shore of the River Welland aforesaid; then southerly again, forming right angles with the said first mentioned course, two chains, more or less, to the south-west angle of the same; then easterly again as a parallel with the said first mentioned course, more or less, to the River Welland; thence westerly, against the stream, following the several windings of the said river, more or less, to within one chain of the south-east angle of Lot Number 222, being the third lot on said river; thence north to the south boundary of Lot Number 193; thence west to within one chain of Lot Number 194; thence north to Niagara River; thence along the water's edge, against the stream, following the several windings of the said river to a point on the north-west boundary of the Military Reserve bearing north 22 degrees east from the place of beginning, or whatever course will form right angles with the said first mentioned course, thence more or less to the place of beginning: save and except those certain portions thereof lying within the limits of the Village of Chippawa in the said Township of Stamford.

And the said the Honorable Thomas Clark and Samuel Street were also seized in fee simple, as tenants in common, of those certain other parcels or tracts of land and premises situate, lying and being in the said Township of Stamford, known as the "Pell Farm," containing by admeasurement 400 acres, be the same more or less, being composed of Lots Number 190, 194, 221 and 222, and butted and bounded as follows, that is to say: Commencing on the Niagara River, at the water's edge on the limit between Lot Number 175 and said Lot Number 190, thence west 50 chains, more or less, to the allowance for road in the rear of said lots; thence south 41 chains, more or less, to Lot 219; thence east 40 chains, more or less, to the limit between Lots Number 220 and 221; thence south 54 chains, more or less, to the River Welland; thence along the River Welland down stream 42 chains, more or less, to the south-west angle of Lot Number 223; thence north 51 chains, more or less, to Lot Number 193; thence west 30 chains, more or less, to the south-east angle of said Lot Number 194; thence north 41 chains, more or less, to the Niagara River; and thence northerly down the stream, along the water's edge, to the place

of beginning, including the allowances for roads. And the northern part of Lots Numbers 220 and 219 in the said Township of Stamford, butted and bounded as follows, that is to say : Commencing at the northernmost limit of said Lot Number 220, at the distance of 50 links from the north-east angle thereof; thence west 29 chains and 68 links, more or less, to the land of the Widow Glasgow; thence south five chains and nine links; thence east 29 chains and 68 links; and thence north five chains and nine links, more or less, to the place of beginning. Each of them, the said the Honorable Thomas Clark and Samuel Street being entitled to an undivided moiety of all the said lands.

2. The said the Honorable Thomas Clark being so seized of an undivided moiety of the said lands, departed this life in or about the year of our Lord 1836, having first duly made and published his last Will and Testament in writing, bearing date on the twenty-ninth day of January, in the year of our Lord 1831, and executed and attested in such manner as by law was then required for rendering valid devises of real estate, whereby, after certain legacies therein mentioned, he devised and bequeathed the whole of his residuary estate, both real and personal, unto his two sisters, Jean Clark, of Buccleugh Street, in the Town of Dumfries, in Scotland, Spinster, and Helen Howat, of Mabie, near Dumfries aforesaid, in equal proportions, as tenants in common.

3. The said Samuel Street departed this life in or about the year of our Lord 1844, being then seized in fee simple of the remaining undivided moiety of the said lands, having first duly made and published his last Will and Testament in writing, bearing date on the thirty-first day of July, in the year of our Lord 1839, and executed and attested in such manner as by law was then required for rendering valid devises of real estate, whereby he devised unto his son, the said Thomas Clark, and his heirs, with other real and personal estate, his said undivided moiety of the said lands, upon trust, to divide the same into as many parts and shares, as nearly equal in value and amount as might be, as the said testator, Samuel Street, should leave children him surviving, who should be living at his decease, and who should attain the age of twenty-one years, and one share more. And upon further trust to appoint and select the several parts or shares which the said Thomas Clark Street, and the said other children of the said testator, Samuel Street, should take, and to distribute and appoint the said shares as follows, that is to say : The said Thomas Clark Street two shares, and to each of the said other children of the testator, one share each, to have and to hold the said shares unto all the said several children of the said testator, and their several heirs for ever.

4. The said Thomas Clark Street accepted the trusts of the said Will of the said testator, Samuel Street, and entered into possession of the said undivided moiety of the said lands as trustee under the said Will.

5. The said Jean Clark departed this life in the month of May, in the year of our Lord 1854, having first duly made and published her last Will and Testament in writing, whereby she devised unto George Maxwell, Thomas Stewart Gladstone, and John Hamilton, her estate and interest in the said lands, and appointed them her executors, with power to sell and dispose of the said lands.

6. The said Helen Howat departed this life in the month of March, in the year of our Lord 1855, having first duly made and published her last Will and Testament in writing, whereby she appointed the said George Maxwell, and Thomas Stewart Gladstone, and John Hamilton, and one Robert Adamson, to be her executors, and directed them to sell and dispose of her estate and interest in the said lands.

7. Probate of the said Will of the said Helen Howat was granted to the said George Maxwell, Thomas Stewart Gladstone, and John Hamilton, the said Robert Adamson having renounced Probate thereof, and refused to act or interfere as such executor.

8. On the seventh day of May, in the year of our Lord 1855, by Indenture bearing that date, the said George Maxwell, Thomas Stewart Gladstone, and John Hamilton, as executors and trustees under the Wills of the said Jean Clark and Helen Howat respectively, did grant, bargain, sell and convey the interest of the said Jean Clark and Helen Howat respectively in the said lands unto Thomas Clark Street, of Clark Hill, in the Township of Stamford aforesaid, his heirs and assigns forever.

9. The said Thomas Clark Street forthwith, upon the making of the said conveyance, in the eighth paragraph mentioned, entered into possession of the undivided moiety of the said lands thereby conveyed to him as the absolute owner thereof in fee simple, and continuously remained in possession thereof, as such owner, down to the time of his death, hereinafter mentioned.

10. The said Samuel Street left five children him surviving, namely: his son, the said Thomas Clark Street, and four daughters, namely: the defendants Cynthia Fuller and Julia Ann Macklem, Elizabeth Plumb, since deceased, in her life time the wife of the defendant Josiah Burr Plumb, and ~~Caroline Macklem~~, now ^{the defendant} Caroline Becher, the wife of ^{the defendant} Henry C. R. Becher, all of whom attained the age of 21 years.

11. Under and by virtue of the Will of the said Samuel Street, deceased, the said Thomas Clark Street became entitled to two undivided sixth parts, to his own use and benefit; and the said Cynthia, Julia Ann, Elizabeth and Caroline, became equitably entitled each to one undivided sixth part of the moiety of the said lands to which the said Samuel Street was entitled at the time of his death, but no division of the same has ever taken place, and under and by virtue of the conveyance in the eighth paragraph mentioned, the said Thomas Clark Street became entitled to the whole of the remaining moiety of the said lands to his own use and benefit.

12. After the death of the said Samuel Street, the said Caroline, for a valuable consideration, released and conveyed to the said Thomas Clark Street and his heirs, all her said one-sixth part of the said moiety of the said lands; and the said Thomas Clark Street accepted the said release and conveyance, and became seized thereof as to two undivided fifth parts thereof, to his own use and benefit, and as to the remaining three undivided fifth parts thereof, as trustee for the said Cynthia Fuller, Julia Ann Macklem, and Elizabeth Plumb, in equal shares.

12 (a). By certain marriage articles, dated on the twenty-ninth day of May, in the year of our Lord 1849, made between the said Josiah Burr Plumb, of the first part, and the said Thomas Clark Street, as trustee and guardian of the said Elizabeth Plumb, then Elizabeth Street, of the second part, and made shortly before, and in contemplation of, the marriage of the said defendants, Josiah Burr Plumb and Elizabeth Street, the said defendant, Josiah Burr Plumb, amongst other things, did covenant with the said Thomas Clark Street that the share of the said Elizabeth Street in the said lands should during and notwithstanding her coverture be held and enjoyed by her, the said Elizabeth, for her separate use and benefit, or to such uses as she should, notwithstanding her coverture, by any deed or by her last will and testament appoint.

13. The said Elizabeth Plumb departed this life on or about the twentieth day of December, A.D. 1868, leaving her surviving her husband, the defendant Josiah Burr Plumb, and leaving also her surviving her 6 children and heirs at law, the defendants Thomas Street Plumb, Frederick Plumb, Duncan Charles Plumb, Elizabeth Street Plumb, Mary Gertrude Plumb, and Anna Isabel Burr Plumb, the

last four of whom are infants under the age of 21 years, and leaving her last will and testament in writing, duly executed and attested in such manner as by law is required for rendering valid devises of real estate, in the words and figures following, that is to say:—

In the name of God, Amen.

I, Elizabeth Plumb, of Niagara, do make this my last will.

I give, devise and bequeath all the property, real and personal; of or to which I shall die possessed or entitled to my brother, Thomas Clark Street, his heirs and assigns, upon the following trusts:

To pay the income arising from my said estate to my dear husband during his natural life for the benefit of our children; to sell and dispose of and invest such part or parts of my said estate as my said husband shall from time to time by any writing under his hand direct, and to apply any portion of the said estate as my said husband shall direct in writing; to make such disposition of my said estate remaining at the time of my husband's death as he shall by his last will direct; to transfer and assign to my said dear husband absolutely for his own use and benefit, freed and discharged from all trusts whatever, the whole of my said estate whenever my said husband shall require him by deed to make such assignment.

I appoint my said dear husband and my said brother my executors.

(signed), Elizabeth Plumb.

Signed, sealed, published and declared in the presence of us, who at her request and in the presence of each other, have subscribed our names as witnesses hereto, the fourteenth day of November, A.D. 1868.

(signed), William McMurray.

(signed), Henry Paffard.

14. The said Thomas Clark Street departed this life on or about the sixth day of September, in the year of our Lord 1872, having first duly made and published his last Will and Testament in writing, bearing date on the second day of September, in the year of our Lord 1872, and executed and attested in such manner as by law is required for rendering valid devises of real estate, whereby amongst other things he devised his own beneficial interest in the said lands unto his mother Abigail H. Street, for and during the term of her natural life, and from and after the decease of the said Abigail H. Street, unto your complainant and his heirs, subject to a provision, that in case the said Abigail H. Street should die before your complainant should attain

the age of 23 years, then that your complainant should not take possession of, or have charge of, the said lands until he should attain the age of 23 years, and that in the meantime the executors and trustees named in the said Will of the said testator, should occupy and manage the same.

14 (a). The said Will of the said Thomas Clark Street contained no devise of or affecting any real estates which were vested in the said testator as trustee, and the legal estate in all the real estates vested in him in fee at the time of his death as trustee, including the undivided shares in the lands in the first paragraph of this Bill mentioned, of the defendants Cynthia Fuller, Julia Ann Macklem, and of the six children and heirs at law of the said Elizabeth Plumb, in the thirteenth paragraph named, descended to the defendants Cynthia Fuller, Julia Ann Macklem, Caroline Becher, Thomas Street Plumb, Frederick Plumb, Duncan Charles Plumb, Elizabeth Street Plumb, Mary Gertrude Plumb, and Anna Isabel Burr Plumb, as heirs at law of the said Thomas Clark Street, deceased.

15. Upon the death of the said testator, Thomas Clark Street, his said mother took and possessed his interest in the said lands until the time of her death, which took place on the twelfth day of September, in the year of our Lord 1872, and thereafter and until your complainant attained the said age of 23 years, Richard Miller and the defendant, Thomas Brock Fuller, the executors and trustees named in the said Will of the said Thomas Clark Street, took and possessed his interest in the said lands in accordance with the provisions thereof.

16. Your complainant attained the age of 23 years upon the twenty-sixth day of June, in the year of our Lord 1876, and thereupon entered into and has continuously remained, to which the said defendant, of his undivided share of the said lands.

17. Your complainant submits that he is entitled, under the circumstances hereinbefore set forth, as owner in fee, to 7 equal undivided tenth parts of the said lands; the defendant, Cynthia Fuller, is equitably entitled, as owner in fee, to 1 equal undivided tenth part of the said lands, subject to the estate therein, to which the said defendant, Thomas Brock Fuller, is entitled, as being her husband; the defendant, Julia Ann Macklem, is equitably entitled to 1 equal undivided tenth part of said lands, and the defendants, Josiah Burr Plumb, Thomas Street Plumb, Frederick Plumb, Duncan Charles Plumb, Elizabeth

Street Plumb, Mary Gertrude Plumb, and Anna Isabel Burr Plumb
some or one of them is or are equitably entitled to the remaining 1
equal undivided tenth part of said lands.

18. The defendant, Caroline Becher, is the wife of the defend-
ant, Henry Corry Rowley Becher.

YOUR COMPLAINANT THEREFORE PRAYS :

1. That the several shares and interest of your complainant and of the defendants may be ascertained and declared by this Honorable Court, and that the said lands may be partitioned amongst your complainant and the said defendants, according to their respective shares and interests.
2. That your complainant may be paid his costs of this suit.
3. That for the purposes aforesaid, all proper directions may be given and accounts taken.
4. That your complainant may have such further and other relief in the premises, as to your Lordships may seem meet.

And your complainant will ever pray.

